

**WEST TISBURY ZONING BOARD OF APPEALS**  
**MINUTES JULY 26, 2006**  
**TOWN HALL 7PM**

**PRESENT:** Eric Whitman, Tucker Hubble, Toni Cohen, Nancy Cole, Tony Higgins, Larry Schubert

**ABSENT:** Bob Schwier

**ALSO PRESENT** for All or Part of the Meeting: Paul McLaughlin, Jean Krasnow, Tom Engley, Ellen Wolfe, Tim Rush, David Knauf, Erin Jennings, Donnie Mills, Kirsten Mills, Ernie Mendenhall (Bldg & Zone Insp)

**BUSINESS**

- Minutes of June 21 were approved.
- The ZBA had been made aware of an amendment to the MA General Laws, “An Act Further Regulating Meetings of Municipal Boards”, that would help avoid quorum problems in the event of a series of hearings on an application. At their July 27, 06 meeting, the ZBA agreed to ask the Selectmen to adopt this amendment of Ch 39 Sect 23D for the Town after it takes effect on August 10.
- Russo property at Rosbecks...still not built on (foundation is in; zba gave special permit to build after lot lost its buildability. Foundation had been put in on an expired building permit. The Russos had had personal and financial hardships). Assoc. Secretary Donna Bouchard had been into ZBA office, and talked to Ernie, to see if Town can force capping it, or fill it in, etc. Ernie will enforce that an engineer must inspect the foundation. A neighbor may want to buy the property. In informal discussion, the ZBA all agreed that the Russos had been given every chance to build and had failed.

**HEARING**

**7:20 PM**      **An application by David Knauf for a Special Permit** for a 16’ by 29’ pool/spa. Sect. 3.1, of Zoning Bylaws; Map 29 Lot 86.16; 41 West Farm Rd; RU Dist. *Correspondence: 1) Abutter Jean Krasnow; 2) Michael Cassavoy (Pres Coffins Field Trust)*

Correspondence was read. David submitted a new, more complete landscaping plan. It included chain link for fencing, to be covered by arbor vitae and ivy. The pool is proposed to have an insulated wooden deck that can slide off and on the pool and able to be locked. Filters, he said, would be housed in the garage and would be soundproofed. He maintained that the pool would be well screened from the road and they would only have one drive open, a one time used entrance will remain unused. Tucker asked if the deck, when slid off the pool would function as a deck area, noting it was less than 50’ from the southern neighbor. David said it would be flush to the ground, and yes could see “deck” use. Some members pointed out, that they could conceivably put chairs out, hang out on any part of their property, so didn’t see the use of the flush to the ground deck as sitting area to be problematical. Nancy Cole however asked what would be on the ground to accommodate opening the deck/pool cover and how close to the lot line

would the cover be when open?? The answer was a metal sliding apparatus flush on the grass, and 13' from the neighbor to the south, the Krasnows.

After discussion, ZBA members concluded that the cover was under 6' and wouldn't be considered a structure, so wouldn't need to meet the, in this case, 40' setback when open. Nancy said she had concerns that there would be pool activity noise on the open cover when slid back. David Knauf said the cover/deck would be mostly shut. Abutter Paul McLaughlin questioned the safety of siting the pool under an overhead walkway. David Knauf built it, he said, to connect the 2<sup>nd</sup> floor of his ("upside down") house with the 2<sup>nd</sup> floor of his garage and the railing is at least 4' high. Mr. McLaughlin and abutter Jean Krasnow said the walkway and a wood-burning furnace at the front of the lot had been built without the Coffins Field Association review. They said David Knauf had ignored a request from the Association to take down the furnace.

Ms Krasnow said she was quite concerned about the proximity of the pool and open deck to her lot because of noise, and about the chain link fence which she didn't consider to be an appropriate or neighbor friendly choice of fencing. She also hoped that the Town would help deal with the fact that Knauf ignored the Association's request to remove the wood burning outdoor furnace. Eric Whitman and some other members said that the Town doesn't get involved with subdivision's regulations. Knauf said the chain link fence would be screened by the plantings as on his plans. Eric said, as long as he has required fencing, the ZBA won't be telling him what kind of fence he should have.

Regarding the issue of a 2<sup>nd</sup> driveway used for Knauf's construction business, alleged in correspondence to park large vehicles for the business, Larry said that at their recent site visit, there didn't appear to be any evidence of the trucks or other construction equipment. In fact, what appeared to be a second drive was now overgrown with grass. So, he asked Knauf, where do you keep all your large trucks for your business that I see on the road? Knauf said he makes a point of not keeping them at his house; he houses them at Leo DeSorcy's business; however he does have 2 commercial pickup trucks and others of his trucks may come to his house from time to time. As for mud on the paved road, it must be from plows as his drive has hardener in it. ZBA asked Knauf what the use was for the upstairs of the garage. He stated it was just his office space.

Mr. McLaughlin said he took issue with the statements that the business trucks were there only once in a while; that there was quite a bit of commercial activity and trucks that were started up at 7 AM and then remained idling. Members who were on the site visit said they had not seen evidence of recent truck activity in what appeared to be a once used 2<sup>nd</sup> drive. Knauf stated that he was aware of and understood his neighbors' concerns. He'd lived there for 12 years and likes neatness.

Eric closed the hearing. Larry asked to clarify, was the sliding deck cover a structure or not? Ernie Mendenhall said it was a rolling pool cover, but the pool is just 50' from the bound and pools can generate noise and if the cover is used as a deck in conjunction with pool use, this is a consideration for the Board. He said, we do look at accessory structures for pools in the permitting. He asked that the ZBA make it a condition that

David Knauf get the necessary inspections and Certificate of Occupancy for his garage (already built) that he did not get before a building permit be issued for a swimming pool. The vote was called for and was unanimous in favor to grant the Special Permit with the usual pool conditions plus the C of O requirement for the garage, as it would not be more detrimental to the neighborhood as the pool would be between 2 buildings and would be well screened. In regard to some of the concerns in Ms. Krasnow's letter, Nancy suggested to her that she see the Zoning/Bldg Inspector if her concerns continued. She replied that she had previously taken photos and brought them to the Inspector.

## **DISCUSSION**

Donnie Mills property..."Bananas Gallery". Questions from Ernie Mendenhall and Pl. Bd. *Correspondence and minutes from Planning Board were read.* The Planning Board minutes reported that David Douglas said the Gallery had become a retail store, not a gallery and the portable roadside sign was in violation of the sign bylaws. Mark Yale said he'd been in Bananas and it clearly was a clothing /jewelry shop with a little art and asked that the permit conditions be enforced. Ernie went to do a site visit at the Planning Board's behest, said he thought they were exceeding "gallery" with the clothing and some other items, and told the gallery people he would be referring the matter to the ZBA for their advice. Murray Frank wrote a letter to ZBA Chair Eric Whitman stating they had received complaints from many townspeople that the clothing store Bananas is in violation of the terms of the Special Permit as the use allowed was for a gallery/antique store. He asked that the ZBA review the decision and alert the Bldg/Zoning Inspector should they believe there is a violation.

ZBA read the issued written decision of April 2002. They had not placed conditions on the change of use Special Permit and had not defined specifically what a gallery and or antiques store would consist of or sell. The use was broadly and simply antique store and/or gallery, as owner Donnie Mills had applied for, not defining if it had to be a fine art gallery or what would constitute "antiques" or that "associated" products could be sold. Kirsten and Donnie Mills said Ernie Mendenhall had not spoken with them, but he had spoken to Ellen Wolfe (proprietor) at the gallery after being asked by the Planning Board to make an inspection. They said that when Ellen took over the lease in '04 she was to go over what she'd sell with Ernie. Ellen said she did talk with Ernie at that time and it had always been her intention to carry a mix. She felt there are variations of what a gallery sells. Ernie said Ellen had told him at his recent site visit that the clothing she sells are hand crafted pieces, are art. From his visit, he feels that the clothing is taking over the gallery.

Eric said his memory of the extension in use granted to the primarily produce store was a long process of informal talks with Donnie and the Planning and Zoning Boards, then an application from Donnie to add art gallery/antiques store to the pre-existing "farm stand". The ZBA had originally told Donnie they couldn't add to or change the use (as although it certainly pre-dated zoning, it had been a farm stand use, a use still allowed in the RU District, albeit by a ZBA Special Permit.) At the hearing, Planning Board members Sue Silva and Ginny Jones testified as long time members of the community, that the Farmer

Green stand had sold a lot of things in addition (to their own produce and florist products.) (From the decision: non-native fruit, groceries, dairy products not their own, art, antiques, furniture, rat poison, pet supplies, tools, prepared food, and sundries. It had also for several seasons served as a retail space for crafted goods (including clothing) in November-December. They also urged on behalf of Donnie's application, as it would give him the rental money to pursue agricultural interests on their land.

Donnie and Kirsten described some of their current agricultural practices made possible through the rent money. They reminded the Board that they had pursued a change to a gallery as it would not have a negative effect on the neighborhood as a kennel might, a use they had considered. The neighbors had supported the change rather than have the place remain empty, as it had done after a few tenants tried to make a go of selling produce, plants and flowers, honey and sundries..

Tucker voiced that what the current business sells is a stretch as a gallery, and not addressing the clothing issue might open a can of worms. Eric asked if the clothing was a bigger part of the inventory this year than before? Ellen replied it was the same as last year. Toni Cohen referred to galleries she'd been to in the Berkshires that sold a mix of jewelry, clothing and art. Ellen Wolfe said the definition of gallery is not just for fine art, for paintings. In order for them to make it, the definition must be broadened. Her gallery in Edgartown sells the same kind of items. Ernie Mendenhall pointed out that her place in Edgartown was zoned for business. Kirsten added that it was a humid building, not a great space for fine art. Donnie said it was almost the 1<sup>st</sup> of August; is there some way to allow Bananas to complete the season with what they are selling. Eric said since Ernie told you are not compliant with the findings of the special permit, with what you sell, you could apply to amend and a hearing would not take place until after Labor Day which would give them time to finish their season, respond to Ernie by applying and maybe they would have a re-think at that point if they wanted to move. He said he was sympathetic (to their mid-season plight). Ellen said she didn't feel like they were doing anything wrong; they held gallery openings, and she felt their place was attractive, unlike some other business properties in the Town and didn't understand why they were a "problem". And, they couldn't survive unless they were carrying clothing. It was explained that the area Bananas is in, although there are several pre-existing businesses and some home occupations, was zoned e.g. the same as the previous applicant from Coffins Field Road, and they were scrutinizing the use and they needed to protect the rural qualities of the Town. It was left that an application should be made to the ZBA to amend the special permit or appeal the decision of the zoning inspector that the place was a retail shop with the clothing being sold there.

The meeting was adjourned at 9:15.

Respectfully submitted, Julie Keefe, Bd. Admin.